

House Bill 1196 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Keen of the 179th, Burkhalter of the 50th, and Mills of the 25th

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to provide for certain tax credits; to amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the Seed-Capital Fund, so as to provide that funds invested by the state from the Seed-Capital Fund, with certain restrictions, may include funds from sources other than the investment entity; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, is amended by adding two new Code sections to read as follows:

"48-7-40.27.

(a) As used in this Code section, the term:

(1) 'Credit' means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 25 percent of the taxpayer's qualified investment.

(2) 'Qualified investment' means a cash investment in the research fund that is not a cash investment made by the state or on behalf of the state.

(3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the research fund reaches \$30 million in total qualified investments, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

(c) The credit provided in subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of tax credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this Code section for a cash investment if they claim the tax credit provided in Code Section 48-7-40.28 for such cash investment.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) In the event that the research fund liquidates prior to the investment of all of the cash received from taxpayers, the credit claimed with respect to such uninvested cash shall be recaptured. Such recapture shall be equal to the amount of the credit attributable to the qualified investment not invested by the research fund and returned to the taxpayer by the research fund. The recaptured amount shall be treated as taxes payable to the state for the taxable year in which such return of such investment occurs.

(f) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section.

48-7-40.28.

(a) As used in this Code section, the term:

(1) 'Credit' means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 10 percent of the taxpayer's qualified investment.

(2) 'Qualified investment' means a cash investment in a legal entity in which the research fund has invested; provided, however, that such investment has been made by the taxpayer at the invitation of the research fund with the express intention of permitting the taxpayer making such qualified investment to qualify for the credit.

(3) 'Research fund' means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the total amount of qualified investments reaches \$75 million, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

(c) The credit provided in subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of the credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter 'S' corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would

account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section for a cash investment into the research fund.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section."

SECTION 2.

Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the Seed-Capital Fund, is amended by revising paragraph (1) of subsection (b) of Code Section 10-10-4, relating to investing of funds with investment entities, as follows:

"(1) Either:

(A) At least \$3.00 of equity contributions has been committed in writing to the investment entity by persons other than the state for every \$1.00 of equity contributions committed by the state from the fund or from an investment entity ~~as to which the state is the sole limited liability owner to the investment entity~~ of; or

(B) At least \$1.00 of equity contributions has been committed in writing to the investment entity by persons other than the state for every \$1.00 of equity contributions committed by the state from the fund or from an investment entity ~~as to which the state is the sole limited liability owner to an investment entity~~ of; provided, however, that no investment is to be made from such investment entity in qualified securities without an equal or greater investment in the same enterprise from sources other than the investment entity, such that unless, in total, at least \$3.00 of investment from sources other than the state, including which may include funds from sources other than the investment entity and funds invested by the investment entity in the enterprise that are other than from equity contributions made by the state from the fund or from an investment entity ~~as to which the state is the sole limited liability owner~~ of, has been

1 committed to such enterprise for every \$1.00 of the state's portion of the amount
2 invested in the qualified securities of such enterprise;"

3 **SECTION 3.**

4 This Act shall become effective upon its approval by the Governor or upon its becoming law
5 without such approval and shall be applicable to investments made on or after July 1, 2008.

6 **SECTION 4.**

7 All laws and parts of laws in conflict with this Act are repealed.